89- 1395

Supreme Court, U.S.
FILED
JAN 5 1990
JOSEPH F. SPANIOL, JR.
CLERK

CASE NO.:

THE SUPREME COURT OF THE UNITED STATES
EIGHTY-NINE TERM

CELIO CASTRO and LARRY FOLTZ,
PETITIONERS,

-versus-

THE UNITED STATES OF AMERICA, ET AL,
RESPONDENTS.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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IN THE CIRCUIT COURT OF THE 16th
JUDICIAL CIRCUIT IN AND FOR
MONROE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 84-35-CA-17

CELIO CASTRO, ET AL,
Plaintiff,

vs.

SAFE HARBOR BOAT REPAIRS, INC.,
AT AL.,
Defendants,

PARTIAL SUMMARY JUDGMENT

Plaintiffs, Celio Castro and Larry Foltz, having moved this Court on December 19, 1984, for a Partial Summary Judgment, and the Court having held a hearing on February 19, 1985, and counsel being before the Court, and having heard argument of counsel, and the record before the Court that there is no issue as to any material fact, and that the Plaintiffs are entitled to Partial

Summary Judgment as a matter of law, it is therefore

ORDERED AND ADJUDGED:

1. That Partial Summary Judgment is Granted to the Plaintiffs and limited to the Deferred Compensation Agreement, entered into between the parties and attached to the Motion for Partial Summary Judgment as Exhibit A, was legal, valid and binding when entered into by and between the parties.

2. That all other matters will be dealt with subsequently by the Court.

DONE AND ORDERED in Chambers, at Key West, Florida, this 25th day of February, 1985.

Helio Gomez

Circuit Court Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 84-1846-Civ-ATKINS

UNITED STATES OF AMERICA, Plaintiff, vs. CELIO CASTRO, LARRY FOLTZ, Defendants.	REPORT OF UNITED STATES MAGISTRATE

This is a suit by the government to quiet title pursuant to 18 U.S.C. S. 1345, against adverse claimants including Celio Castro and Larry Foltz, involving a twenty-three acre multi-million dollar deep water marina on Stock Island, on the Overseas Highway to Key West. The government also seeks declaratory relief and a permanent injunction against alleged trespass to land by the defendants. The United States has filed a motion for summary judgement against

the defendants Celio Castro and Larry Foltz. This motion has been referred to the undersigned pursuant to 28 U.S.C. S. 636(b)(1)(B).

Oral argument was heard upon these motions on January 30, 1987.

The government's claim to the tract is based on a series of conveyances from private parties to the United States.

On March 30, 1982, a judgment of forfeiture was entered in the Northern District of Florida against Antonio Bascaro's beneficial interest in the land. U.S. v. Antonio Bascaro, Case No. PCR-81-940 (N.D. Fla.)

On December 20, 1982, a criminal judgment was entered in the Northern District of Florida against Jose Luis Acosta's beneficial interest in the land. U.S. v. Jose Luis Acosta, MCR 82-220

(N.D. Fla.)

On February 14, 1984, Gustavo "Pepito" Fernandez executed two quitclaim deeds to the United States. These deeds were recorded in Monroe County. Fernandez was under indictment in the Middle District of Pennsylvania, and conveyed his ownership in the property in connection with a plea agreement executed on January 24, 1984. The quitclaim deeds conveyed all interest held by Safe Harbor Boat Repairs, Inc., of which Fernandez was the sole shareholder, to the United States. The defendants have not contested the claim of the government that Safe Harbor Repairs, Inc., possessed record title to the property on February 14, 1984, and that Fernandez was the only shareholder of record, with the right to convey title.

The District Judge on September 28, 1984, granted the government's request for a preliminary injunction against Joseph Valdes, Jr., a state court appointed receiver, holding that the government has made a strong prima-facie showing that it holds record title to the property and that Safe Harbor Boat Repairs Inc. itself is wholly owned by the United States, due to the conveyance by Fernandez of all his corporate shares in that corporation to the United States on February 7, 1984. The preliminary injunction was affirmed on appeal. Celio Castro v. Safe Harbor Boat Repairs Inc., et al, 772 F.2d 917 (11 Cir. 1985).

The defendants Celio Castro and Larry Foltz propound three theories upon which they seek to establish their interests in the tract. They argue first

that the quitclaim deeds taken by the government in its plea agreement with Gustavo Fernandez are void because they were executed while the government had knowledge of the claims of Castro and Foltz to the property and were therefore an attempt by the government to defraud Castro and Foltz, who were creditors of Safe Harbor. The defendants next argue that oral agreements were entered into by Castro, Foltz, and Fernandez, in which Fernandez agreed to transfer one-third interest each in the tract to Castro and Foltz, in return for their agreement to develop the land. The third claim of the defendants is based upon two Deferred Compensation Agreements executed on August 10, 1979, by Castro, Foltz and Safe Harbor, which the defendants contend constitute enforceable encumbrances on

the street.

The government moves for the summary judgement, claiming that there is no remaining genuine issue of material fact and that it is entitled to judgment as a matter of law, because assuming all contested facts to be decided favorable to the defendants, each of their arguments must nevertheless fail as a matter of law.

Each of the claims of the defendants will be treated, seriatim.

Castro and Foltz first argue that the government took the quitclaim deeds from Fernandez knowing of the claim of Castro and Foltz to the tract and therefore in fraud of the lawful creditors of Safe Harbor Boat Repairs, Inc. As stated previously, Safe Harbor held record title to the tract and

Fernandez was the only shareholder of the Corporation.

The government contests the claim that it is legally accountable for knowledge of the existence of the Castro-Foltz claims, but for purposes of this motion it will be assumed that the defendants are correct as to the facts essential to this issue.

Nevertheless, there is no indication of fraud in this record. It is assumed, without deciding, that the government knew Castro and Foltz had claims to the land. The uncontrovertible facts are that on February 14, 1984, the government took quitclaim deeds from Gustavo Fernandez to whatever interest he held in the land. He certainly held at least one-third interest, even if the defendant's claims are valid. The

government believes the arguments upon which Castro and Foltz claim interests are invalid, however, and on August 7, 1984, this quiet title action was filed so that judicial determination of the rights of the various claimants to the land could be had.

The defendants argue that the government should have intervened in a civil suit pending in the Circuit Court of Monroe County involving the agreements, and that its failure to do so indicates bad faith. Neither the United States nor any litigant, however, is required to forego its remedies in one lawfully available forum and seek relief in another.

There appear to be no factual issues outstanding which, resolved favorably to the defendants, would support a claim of

fraud against the United States.

The defendants next argue that oral agreements were entered into by Castro, Foltz, and Fernandez, in which Fernandez agreed to transfer one-third interest each in the land Castro and Foltz, in return for their agreement to develop the land. This alleged agreement, however, is also the subject matter of the Deferred Compensation Agreements, which contain an integration clause providing that they are sole repository of the parties agreements with respect to their subject matter. Moreover, the Florida Statue of Frauds prevents the creation of an interest in real property, or of obligations not to be preformed within one year, by oral agreement. Fla.Stat. S. 689.01; S. 725.01.

At oral argument counsel for the defendants was unable to suggest theories upon which the integration clause and the Statue of Frauds could overcome in this case so that the facts surrounding the alleged oral agreements might become material. For its part, the government argued that as to any possible oral agreements it would be a bona fide purchaser without notice. In the absence of a prima facie showing indicating admissibility of the oral agreements, this contention need not be reached.

The third and strongest argument of the defendants is that the Deferred Compensation Agreements executed on August 10. 1979, by Castro, Foltz, and Safe Harbor, constitute enforceable encumbrances on the tract.

The identical six page agreements state that foltz and Castro are willing to continue in the employ of the company in exchange for specified benefits, including one-third of the proceeds of the sale of the assets of Safe Harbor. The company in turn agrees not to sell any of its assets without the defendants' approval, and that in the event of any sale, the defendants will each receive one-third of the purchase price.

The agreements further state that the defendants' rights are those of unsecured creditors of the Company, and that no corporate funds or assets will be set aside by Safe Harbor Boat Repairs, Inc. for the purpose of performing the agreements.

The government argues that the Deferred Compensation Agreements create

no enforceable interests in the tract because no equitable mortgage or lien was created by the terms of the agreements and because the agreements fail as employment contracts for lack of mutuality of obligation or consideration.

The agreements were drafted for Castro and Foltz by attorneys Martin Kald and Brent Klein, who testified in deposition that the agreements were drafted as Deferred Compensation Agreements to defer the date of the taxable event, and therefore defer taxes charged to their clients.

Under Florida law there are two ways to create an equitable lien. Such a lien may be based upon 1) special circumstances requiring a lien to satisfy justice, or unjust enrichment, or 2) a written contract evidencing an intent to

charge property with a particular debt. Hobco, Inc. v. Tallahassee Associates, ___F.2d____ (11 No. 85-3897, Jan. 8, 1987).

In this case there is no claim of unjust enrichment.

Nor do the Deferred Compensation Agreements appear to constitute a written contract evidencing an intent to charge the tract with a particular debt. By the terms of the agreements at numbered paragraph seven, the rights of the defendants are those of unsecured creditors of Safe harbor Boat Repairs, Inc.

An agreement to encumber or alienate property does not give rise to an equitable mortgage or lien. Hansen v. Five Points Guaranty Bank, 362 So.2d 962,964 (Fla. 1st Dist. 1978).

It does not appear that the agreements executed by Castro and Foltz created any immediate interest in the land either by the creation of an equitable mortgage or lien, or by their terms. Moreover, the transactions failed as gifts, for lack of total surrender of dominion and control or intent to pass immediate title. Ritter v. Shames, 452 So.2nd 1057,1059 (Fla. 3 Dist. 1984).

The defendants of course argue that even lacking a mortgage or equatable lien interest, or a valid gift, they are entitled under the terms of the contracts, which they characterize as employment contracts, to an interest in the land. To this argument the government responds that the contracts fail for lack of consideration and illusoriness, because the defendants did

not agree to remain in the employ of Safe Harbor Boat Repairs Inc. for any specified period.

The relevant clause in the agreements essentially states that Castro and Foltz are willing to continue in the company's employ. The government argues that because Castro and Foltz could leave the company's employ at will, this option to fail to perform causes the contract to fail for lack of consideration.

The government cites Jankins v. City Ice & Fuel Co., 160 So. 215,218 (Fla. 1935), for the proposition that a contract which by its terms reserves the privilege of alternative conduct fails for want of consideration. More specifically, under Florida law an agreement to remain employed for an indefinite period of time with the right

to terminate at will is lacking in mutuality. Hope v. National Airlines, 99 So.2nd 244 (Fla. 3 Dist. 1958).

According to the defendants, in early 1979 Gustavo Fernandez, Celio Castro, and Larry Foltz joined forces to develop a marina operation on Stock Island, Key West, Florida. Fernandez was to provide the land, while Foltz and Castro were to contribute funds and expertise in building the marina. The Deferred Compensation Agreements were set up to compensate the defendants, while minimizing adverse tax consequences.

Castro and Foltz allege that they performed their obligations to develop the marina in 1979 and that after the agreements were executed on August 10, 1979, they continued to improve the property.

There are issues of fact as to whether any work done in the furtherance of the agreements at issue in this case, or whether the work, if any, was actually done in connection with five separate corporations related to Safe Harbor Boat Repair Inc. Castro and Foltz were shareholders in the five related corporations, but not in Safe Harbor Boat Repairs Inc., the "mother corporation."

The issues of fact concerning performance by Castro and Foltz wold be material only if there were in fact binding agreements as a matter of law. As previously discussed, the agreements do not require any specific performance by the defendants and therefore fail as contracts for lack of mutuality whether or not work was done in furtherance of the agreements.

The record does not reveal the existence of any remaining genuine issue of material fact as to the claims of Castro and Foltz, and it appears that the government is entitled to summary judgment against them as a matter of law.

The parties may file objections to this report with the District Judge within ten days after receipt of a copy of the report.

Dated: February 2, 1987

_____

UNITED STATES MAGISTRATE

cc: Steven Zukoff, Esquire
William Meadows, Esquire
United States Attorney

UNITED STATES OF AMERICA, UNITED STATES DISTRICT COURT SOUTHERN DIST. OF FLORIDA

Plaintiff,

vs. No. 84-1846-Civ-ATKINS

CELIO CASTRO, LARRY FOLTZ, et al.,

Defendants.

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

This cause is before the court on the government's motion for summary judgment against defendant's Celio Castro

and Larry Foltz. The motion was referred to Magistrate Charlene Sorrentino pursuant to 28 U.S.C. S. 636 (b) (1) (B).[1] At this time, I have reviewed the motion, memoranda, the Report and Recommendation of the Magistrate, the objections to the report, and I have considered counsel's arguments, which were asserted during the February 25, 1987 hearing on this matter. After carefully considering the motion, it is

ORDERED AND ADJUDGED that plaintiff's motion for summary judgment is GRANTED.

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[1] This case is rather complex, and I appreciate the able assistance provided by Magistrate Sorrentino in resolving this matter.

I. STATEMENT OF THE CASE

The government initiated this suit to quiet title pursuant to 18 U.S.C. S. 1356, against adverse claimants including CELIO CASTRO and LARRY FOLTZ. The property consists of a twenty-three acre multi-million dollar deep water marina on Stock Island located on the Overseas Highway to Key West. The government also seeks declaratory relief and a permanent injunction against alleged trespass to land by the defendants.

The government's claim to the tract is based on a series of conveyances from private parties to the United States. On March 30, 1981, a judgment of forfeiture was entered in the Northern District of Florida against Antonio Bascaro's beneficial interest in the

land. UNITED STATES V. ANTONIO BASCARO, Case No. PCR-81-940 (N.D. Fla.). Then, on December 20, 1982, a criminal judgment was entered in the Northern District of Florida against Jose Luis Acosta's beneficial interest in the land. United States v. Jose Luis Acosta MCR 82-220 (N.D. Fla.). Finally, on February, 14, 1984, Gustavo "Pepito" Fernandez executed two quitclaim deeds to the United States. These deeds were recorded in Monroe County. Fernandez was under indictment in the Middle District of Pennsylvania, and conveyed his ownership in the property in connection with a plea agreement executed on January 24, 1984. The quitclaim deeds conveyed all interest held by Safe Harbor Boar Repairs, Inc., of which Fernandez was the sole record

shareholder, to the United States.[2]

On September 18, 1984, I entered a preliminary injunction against Joseph Valdes, Jr., a state court appointed receiver, holding that the government had made a strong prima-facie showing that it holds record title to the property and that Safe Harbor Boat Repairs Inc. itself is wholly owned by the United States, due to the conveyance by Fernandez of all his corporate shares in that corporation to the United States on February 7, 1984. The preliminary injunction was affirmed on appeal. Celio Castro v. Safe Harbor Boat Repairs, Inc., 772 F.2d 917 (11 Cir. 1985).

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[2]Defendants do not contest the government's assertions that Safe Harbor Repairs, Inc. possessed record title to the property on February 14, 1984, and that Fernandez, as the only shareholder of record, had the right to convey title.

Defendants have asserted several theories upon which they seek to establish their interest in the property. First, they claim that the quitclaim deeds, held by the government, are void because the government attempted to defraud Castro and Foltz who were creditors of Safe Harbor. Second, defendants argue that Fernandez orally agreed to transfer a one-third interest to each defendant in return for their agreement to develop the land. Third, defendants state they are each entitled to a one-third interest in the land based upon two deferred compensation agreements executed on August 10, 1979, by Castro, Foltz, and Safe Harbor Boat Repairs, Inc. Finally, defendant urge that they are entitled to an equitable lien against the property.

After reviewing the record, the motion, memoranda, and after hearing oral arguments by counsel on January 30, 1987, Magistrate Sorrentino determined that there were no genuine issues of material fact as to the claims of Castro and Foltz, and that the government was entitled to summary judgement against them as a matter of law. Each side filed their objections to the report and were allowed to present oral arguments in support of their conflicting positions.

II. DISCUSSIONS

Following the Magistrate's example, each of the points will be treated seriatim.[3]

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[3]Magistrate Sorrentino also found that the asserted transactions failed as gifts based upon the lack of surrender of dominion and control or intent to pass

A. Fraudulent Conveyance

Defendants argue that the government took the quitclaim deeds from Fernandez knowing that the defendants had claims against the property. Thus, they assert that the conveyance was intended to defraud the lawful creditors of Safe Harbor Boat Repairs, Inc. However, the magistrate found that there were "no factual issues outstanding which, resolved favorably to the defendants, would support a claim of fraud against the United States." I agree with the magistrate.

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immediate title. See Ritter v. Shames, 452 So.2d 1057, 1059 (Fla. Dist. Ct. App. 1984). Because this finding has not been challenged and appears to be correct, no further discussion is necessary.

After carefully considering counsel's contentions, I am convinced that defendants cannot maintain their action for fraudulent conveyance. Fernandez gave the government a quitclaim deed. Clearly, this was sufficient to transfer at least the one-third interest he held, even if the defendant's claims are valid. More importantly, however, the nature of the quitclaim conveyance is significant. The government received whatever interest was held by the transferor, no more, no less. Thus, if defendants have a valid interest, then it was not transferred by the quitclaim deed. In short, the conveyance, structured as it was, cannot have affected defendants. Instead, their claim succeeds or fails based upon the merits of those theories and facts which

have been offered to show that defendants hold a valid interest in the property.

B. Oral Agreements

Defendants argue that Fernandez, orally agreed to transfer a one-third interest in the land to each of them, in return for their agreement to develop the land. However, during oral argument before the Magistrate, defense counsel was unable to suggest any legal theories which would avoid the integration clause of the written agreements concerning the same conveyance.[4] Similarly, counsel was

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[4] The Deferred Compensation Agreement provides:

> This Agreement sets forth all the premises, agreements, conditions, understandings, warranties, and representations among the parties hereto with respect to the subject matter hereof, and there are no

unable to suggest any basis to overcome the Statue of Frauds. See Fla. Stat. §. 689.01; §. 725.01.[5] Thus the Magistrate concluded that defendants could not claim an interest in the land under this theory, I agree.

C. An Equitable Lien

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promises, agreements, conditions, understandings, warranties or representations, oral or written, expressed or implies, among them other than as set forth herein.

[5] Fla. Stat. § 689.01 requires that:

No estate or estate of freehold ... shall be created, made, granted, transferred or released in any other manner than by instrument in writing....

Similarly, Fla. Stat. § 725.01 requires that the instrument be signed by a party against whom enforcement is sought and that it contain all the essential terms of sale (without result to parol evidence). See e.g., Fox v. Sales at Laguna Club Development Corp., 403 So.2d 456, 458 (Fla. 3d DCA 1981).

Defendants contend that equitable considerations justify the imposition of an equitable lien. Under Florida law there are two ways to create an equitable lien. Such a lien may be based upon 1) special circumstances requiring a lien to satisfy justice, or unjust enrichment, or 2) a written contract evidencing an intent to charge property with a particular debt. Hobco, Inc. v. Tallahassee Associates, ____ F.2d ____ (11 No. 85-3897, Jan. 8, 1987).

The Magistrate found that defendants could not fulfill the Hobco standards. She noted that defendants had not asserted a claim for unjust enrichment. Furthermore, she found that the Deferred Compensation Agreements did

not constitute a written contract evidencing an intent to charge the tract with a particular debt. By the same terms of the agreements at numbered paragraph seven, the rights of the defendants are those of unsecured creditors of Safe Harbor Boat Repairs, Inc. Finally, she relied upon Hansen v. Points Guarantee Bank, 362 So.2d 962 (Fla. Dist. Ct. App. 1978). There, the court held that an agreement not to encumber or alienate property does not give rise to an equitable mortgage or lien. Id. at 964.

After reviewing counsel's arguments, I agree with the Magistrate once more. Hansen strongly supports the government's position. In addition, for reasons which will be discussed at

greater length in the next section, I find that defendants cannot satisfy Hobco's first prong. Briefly stated, my decision rests on two factors. First, defendants have admitted that they performed no work for Safe Harbor Boat Repairs, Inc. Second, the concept of the "corporate" entity must be respected.

D. The Deferred Compensation Agreements

In her report, Magistrate Sorrentino stated that defendant's strongest argument is that the Deferred Compensation Agreements of August 10, 1979, constitute enforceable encumbrances on the property. Nevertheless, she concluded the agreements failed as contracts for lack of mutuality. On this

point, I agree with the magistrate's conclusion although I reach the result in a slightly different manner.

First, I agree that the promises made between Castro, Foltz, and Safe Harbor Boat Repairs, Inc. never became binding because Castro and Foltz never performed. In reaching this conclusion, I have relied upon defendants' own admission that no such work was ever performed. For example, during Castro's deposition, he was asked whether he worked at Safe Harbor Boat Repairs prior to going to prison to serve his sentence for marijuana trafficking. Castro acknowledged that he had not worked for Safe Harbor Boat Repair:

Q. Between August of 1979, and February of 1980 (referring to when Castro began serving his sentence), did you work at Safe Harbor Boat Repairs, Inc.?

A. No.

Castro Deposition taken September 18, 1984, at Page 58, Lines 10-12. Similarly, Foltz clearly stated that he did not work for Safe Harbor Boat REpair, Inc.

A. No. I never worked for Safe Harbor Boat Repair.

Foltz Deposition taken January 7, 1986, at Page 70, Lines 19-21. Once a defendant has clearly answered an

unambiguous question, that party must present persuasive reasons for rejecting the clear testimony. See Van T. Junkins & Associates, Inc. v. U.S. Industries, Inc., 736 F.2d 656, 657 (11th Cir. 1984).[6]

Second, I believe that the contracts fail because the consideration was illusory. Under the deferred compensation agreements, the sole stated consideration to be provided by both defendants Castro and Foltz was their

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[6] Herrera's affidavit is insignificant. Although he saw defendants working on the property, he does not identify the corporation employing defendants. Defendants cannot argue that working for the other companies was the equivalent of working for Safe Harbor Boat Repairs, Inc., since there has been no claim that the corporate veil should be pierced. See Hobco, No. 85-3897, Slip Op. at 1110, 1115 (11th Cir. Jan. 8, 1987).

being "willing to continue in the employ of Company (Safe Harbor Boat Repairs, Inc.)." No specific accomplishment had to be performed at any time. Therefore, it is extremely difficult to determine what performance, if any, was necessary to fulfill defendants' part of the bargain. By the terms of the agreements, defendants' attitude, their willingness to work, was the consideration offered instead of any actual performance. In short, the terms of the contract suggest that Fernandez fully intended to <u>give</u> defendants an interest in the property. Unfortunately, the structure of their agreement, designed to avoid a present transfer of any interest, has left defendants with no claim against the

property.[7]

III. CONCLUSION

After considering the law and applying it to the facts of this case, I concur with the Magistrate's recommendation. I find that there are no genuine issues of material fact and plaintiff is entitled to judgement of matter of law. Thus, plaintiff's motion os GRANTED.

DONE AND ORDERED at Miami,

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[7] Two final points merit discussion. First, defendants may have a quantum merit action, but it was not asserted. Second, even if the agreements were enforceable executory contracts, they would be between Safe Harbor Boat Repairs, Inc., Fernandez and the defendants. At most, Fernandez and the company would be subject to an action for breach of contract for which the defendants could seek damages.

Florida, this 11 day of March, 1987.

_____

UNITED STATES

DISTRICT JUDGE

cc: AUSA Armstrong

William A. Meadows, Jr., Esq.

Joseph Allen III, Esq.

Thomas Tatum, Esq.

Michael Fertig, Esq.

Steve Zukoff, Esq.

SDA7 : cjm

84-1846

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA

CASE NO. 84-1846-CIV-ATKINS

UNITED STATES OF AMERICA

Plaintiff,

vs.

CELIO CASTRO and JOSEPH A. VALDES, JR., Receiver appointed by the Circuit Court of the 6th Judicial Circuit in and for Monroe County, Florida,

and

WARREN ELECTRIC OF KEY WEST, INC., FLORIDA KEYS FIRST STATE BANK, HARRY KNIGHT, as Tax Collector for Monroe County, CLARA FERNANDEZ and LARRY FOLTZ,

Defendants.

FINAL JUDGMENT

This action was brought by the United States for injunctive and declaratory relief and to quiet title to certain real property, including all improvements thereon and appurtenances thereto, situate in Monroe County, Florida, and described as follows:

A parcel of filled and submerged land consisting of part of the area described in I.I. Deed 20793 and located southernly of Block 57 according to the plat of MacDonalds Plat of Part of Stock Island dated 1910, recorded in Plat Book 1 at page 55 of Monroe County Official Records and is more particularly

described as follows:

From the northwest corner of Block 57, according to said plat go easternly along the southernly line of Fifth Avenue a distance of 500 feet to a point, thence at right angles and southernly a distance of 2242.52 feed to a point; thence at right angles and easternly a distance of 1066.72 feet to a point which point is the point of beginning; thence continue easterly along prolongation of the previously described course a distance of 515.53 feet to a point; thence southeasternly making a deflection angle of 77 degrees 25 minutes with the prolongation of the previously described course a distance of 1536.92 feet to a point; thence

westernly making a deflection angle to 102 degrees 35 minutes with the prolongation of the previously described course a distance of 8488.36 feet to a point; thence northernly and at right angles a distance of 1500 feet back to the point of beginning. Containing 23.48 acres, more or less.

This action came before the Court, the Honorable C. Clyde Atkins, United States District Judge, presiding, and the issues raised in the proceedings have been duly heard and decisions have been duly rendered, as set forth below:

A. As to Defendants CELIO CASTRO and LARRY FOLTZ, this Court on March 11, 1987, entered an order granting Plaintiff's motion for summary judgement

in favor of the United States and against Celio Castro and Larry Foltz;

B. This action as it applies to Defendant, CLARA FERNANDEZ, was tried before this Court, and a decision was duly rendered and set forth in this Court's memorandum opinion and order entered August 25, 1987;

C. As to Defendant, WARREN ELECTRIC OF KEY WEST, INC., FLORIDA KEYS STATES BANK, and HARRY KNIGHT, as Tax Collector for Monroe County, said defendants and Plaintiff have stipulated to entry of judgement as set forth herein;

D. The claims and defenses of Defendant, JOSEPH A. VALDES, JR., Receiver appointed by the Circuit Court of the Judicial Circuit in and for Monroe County, Florida, have been resolved by the above-stated decisions and

adjudications, and by this Court's order of injunction entered September 28, 1984;

E. The third party action in this lawsuit, filed by CELIO CASTRO and LARRY FOLTZ against GUSTAVO FERNANDEZ, has been rendered moot by the above-stated decisions and adjudications:

WHEREFORE, it is ORDERED AND ADJUDGED:

1. That sole and complete title to said real property is hereby declared and adjudged to be vested exclusively in Plaintiff, THE UNITED STATES OF AMERICA, in fee simple absolute, subject only to the liens set forth in paragraphs 2 through 4 below, which liens are in the priority with which they are set forth below;

2. That Monroe County, Florida, which appears in this lawsuit by and

through Defendant, HARRY KNIGHT as Tax Collector for Monroe County, has a tax lien on said real property, and under that lien is due unpaid taxes of $26,200.57, is due unpaid accrued interest through April 30, 1988 totaling $19,264.96, and is due additional interest of $12.92 per day from May 1, 1988 through the date that said lien is satisfied. Payment of the above amounts shall constitute complete satisfaction of said lien. Said lien is to be satisfied from the proceeds the sale said real property, and upon such satisfaction said Defendant is directed to record notice of the complete satisfaction of said lien in the appropriate public records.

3. That Defendant, FLORIDA KEYS FIRST STATE BANK (now know as FIRST STATE BANK), has a first mortgage lien on said

real property, and under that lien, is due principal in the amount of $246,692.26, is due accrued interest through April 30, 1988 totalling $216,363.63, and is due additional interest of $108.14 per day from May 1, 1988 through the date that said lien is satisfied. Payment of the above amounts shall constitute complete satisfaction of said lien. Said lien is to be satisfied from the proceeds from the sale of said real property, and upon such satisfaction said Defendant is directed to record notice of the complete satisfaction of said lien in the appropriate public records.

4. That Defendant, WARREN ELECTRIC OF KEY WEST, INC., has a lien on said real property, and under that lien is due principal in the amount of $70,000.00, is

due accrued interest through April 30, 1988 totalling $7,763.29, and is due additional interest of $15.34 per day from May 1, 1988 through the date that said lien is satisfied. Payment of the above amounts shall constitute complete satisfaction of said lien. Said lien is to be satisfied from the proceeds from the sale of said real property, and upon such satisfaction said Defendant is directed to record notice of the complete satisfaction of said lien in the appropriate records.

5. That Defendant, CELIO CASTRO, is hereby declared and adjudged to have no right, title, or interest in or to said real property;

6. That Defendant, LARRY FOLTZ, is hereby declared and adjudged to have no right, title, or interest in or to said

real property;

7. That Defendant, JOSEPH VALDES, JR., is hereby declared and adjudged to have no right, title, or interest in or to said real property;

8. That Defendant, CLARA FERNANDEZ, is hereby declared and adjudged to have no right, title, or interest in or to said real property;

9. That Defendants, CELIO CASTRO and JOSEPH A. VALDES, JR., as court appointed receiver, or any replacement or substitute receiver or officer appointed by the Circuit Court of the 16th Judicial Circuit in and for Monroe County, Florida, are hereby enjoined from entering, dispossessing, or in any way interfering with the ownership, use, occupation, enjoyment and benefit of the United States of America of said real

property;

10. That Plaintiff United States of America's title to said real property be, and the same is hereby quieted and established, and the claims or alleged claims of the defendants, other that those liens set forth in paragraphs 2 through 4 above, are hereby barred, removed and adjudged not to constitute clouds upon the plaintiff's title to said land.

11. That any right, title or interest of the defendants, other than those liens set forth in paragraphs 2 through 4 above, are hereby cancelled and annulled.

12. That the third-party action in this lawsuit, filed by CELIO CASTRO and LARRY FOLTZ against GUSTAVO FERNANDEZ, is hereby dismissed with prejudice and that

Defendants/Third Party Plaintiffs, CELIO CASTRO and LARRY FOLTZ, take nothing by their third party action against Third Party Defendant, GUSTAVO FERNANDEZ.

DONE AND ADJUDGED in Miami, Florida, on September 27, 1988.

UNITED STATES DISTRICT JUDGE

Copies to :

Samuel D. Armstrong, AUSA

Stephen M. Zukoff, Esq.

Joel S. Perwin, Esq.

Michael Fertig, Esq.

Thomas R. Tatum. Esq.

William A. Meadows, Esq.

Joseph B. Allen, III, Esq.

Jose Martinez, Esq.

Ms. Clara Fernandez

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NO. 88-6010

D.C. Docket No. 84-1846

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

CELIA CASTRO,
LARRY FOLTZ,
Defendants/Third-Party Plaintiffs-Appellants,

JOSEPH A. VALDES, JR., etc., et al.,
Defendants,

versus

GUSTAVO FERNANDEZ,
Third-Party Defendant-Appellees.

Appeal from the United States District Court for the Southern District of Florida

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(September 28, 1989)

BEFORE: FAY and KRAVITCH, Circuit Judges, and CASTAGNA, District Judge.

PER CURIAM: AFFIRMED. See 11th Cir. R. 36-1. "Costs taxed against defendants/third-party plaintiffs-appellants."

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*Honorable William J. Castagna, U.S. District Judge for the Middle District of Florida, sitting by designation.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NO. 88-6010

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

CELIA CASTRO,
LARRY FOLTZ,
Defendants/Third-Party Plaintiffs-Appellants,

JOSEPH A. VALDES, JR., etc., et al.,
Defendants,

versus

GUSTAVO FERNANDEZ,
Third-Party Defendant-Appellees.

Appeal from the United States District Court for the Southern District of Florida

ON PETITION(S) FOR REHEARING
(November 6, 1989)

BEFORE: FAY and KRAVITCH, Circuit Judges, and CASTAGNA, District Judge.

PER CURIAM: The petition(s) for rehearing filed by appellants, Celia Castro and Larry Foltz, is denied.

ENTERED FOR THE COURT:
PHYLLIS KRAVITCH
United States Circuit Judge
*Honorable William J. Castagna, U.S. District Judge for the Middle District of Florida, sitting by designation.

Judgment Entered: September 28, 1989
For the Court: Miguel J. Cortez, Clerk
By: Karleen McNabe
Deputy Clerk